

105TH CONGRESS
1ST SESSION

S. 543

AN ACT

To provide certain protections to volunteers, nonprofit organizations, and governmental entities in lawsuits based on the activities of volunteers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Volunteer Protection
5 Act of 1997”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 The Congress finds and declares that—

3 (1) the willingness of volunteers to offer their
4 services is deterred by the potential for liability ac-
5 tions against them;

6 (2) as a result, many nonprofit public and pri-
7 vate organizations and governmental entities, includ-
8 ing voluntary associations, social service agencies,
9 educational institutions, and other civic programs,
10 have been adversely affected by the withdrawal of
11 volunteers from boards of directors and service in
12 other capacities;

13 (3) the contribution of these programs to their
14 communities is thereby diminished, resulting in
15 fewer and higher cost programs than would be ob-
16 tainable if volunteers were participating;

17 (4) because Federal funds are expended on use-
18 ful and cost-effective social service programs, many
19 of which are national in scope, depend heavily on
20 volunteer participation, and represent some of the
21 most successful public-private partnerships, protec-
22 tion of volunteerism through clarification and limita-
23 tion of the personal liability risks assumed by the
24 volunteer in connection with such participation is an
25 appropriate subject for Federal legislation;

1 (5) services and goods provided by volunteers
2 and nonprofit organizations would often otherwise be
3 provided by private entities that operate in interstate
4 commerce;

5 (6) due to high liability costs and unwarranted
6 litigation costs, volunteers and nonprofit organiza-
7 tions face higher costs in purchasing insurance,
8 through interstate insurance markets, to cover their
9 activities; and

10 (7) clarifying and limiting the liability risk as-
11 sumed by volunteers is an appropriate subject for
12 Federal legislation because—

13 (A) of the national scope of the problems
14 created by the legitimate fears of volunteers
15 about frivolous, arbitrary, or capricious law-
16 suits;

17 (B) the citizens of the United States de-
18 pend on, and the Federal Government expends
19 funds on, and provides tax exemptions and
20 other consideration to, numerous social pro-
21 grams that depend on the services of volun-
22 teers;

23 (C) it is in the interest of the Federal Gov-
24 ernment to encourage the continued operation
25 of volunteer service organizations and contribu-

tions of volunteers because the Federal Government lacks the capacity to carry out all of the services provided by such organizations and volunteers; and

(D)(i) liability reform for volunteers, will promote the free flow of goods and services, lessen burdens on interstate commerce and uphold constitutionally protected due process rights; and

(ii) therefore, liability reform is an appropriate use of the powers contained in article 1, section 8, clause 3 of the United States Constitution, and the fourteenth amendment to the United States Constitution.

(b) PURPOSE.—The purpose of this Act is to promote the interests of social service program beneficiaries and taxpayers and to sustain the availability of programs, nonprofit organizations, and governmental entities that depend on volunteer contributions by reforming the laws to provide certain protections from liability abuses related to volunteers serving nonprofit organizations and governmental entities.

1 **SEC. 3. PREEMPTION AND ELECTION OF STATE NON-**
 2 **APPLICABILITY.**

3 (a) PREEMPTION.—This Act preempts the laws of
 4 any State to the extent that such laws are inconsistent
 5 with this Act, except that this Act shall not preempt any
 6 State law that provides additional protection from liability
 7 relating to volunteers or to any category of volunteers in
 8 the performance of services for a nonprofit organization
 9 or governmental entity.

10 (b) ELECTION OF STATE REGARDING NON-
 11 APPLICABILITY.—This Act shall not apply to any civil ac-
 12 tion in a State court against a volunteer in which all par-
 13 ties are citizens of the State if such State enacts a statute
 14 in accordance with State requirements for enacting legisla-
 15 tion—

16 (1) citing the authority of this subsection;

17 (2) declaring the election of such State that this
 18 Act shall not apply, as of a date certain, to such civil
 19 action in the State; and

20 (3) containing no other provisions.

21 **SEC. 4. LIMITATION ON LIABILITY FOR VOLUNTEERS.**

22 (a) LIABILITY PROTECTION FOR VOLUNTEERS.—Ex-
 23 cept as provided in subsections (b) and (d), no volunteer
 24 of a nonprofit organization or governmental entity shall
 25 be liable for harm caused by an act or omission of the
 26 volunteer on behalf of the organization or entity if—

1 (1) the volunteer was acting within the scope of
 2 the volunteer's responsibilities in the nonprofit orga-
 3 nization or governmental entity at the time of the
 4 act or omission;

5 (2) if appropriate or required, the volunteer was
 6 properly licensed, certified, or authorized by the ap-
 7 propriate authorities for the activities or practice in
 8 the State in which the harm occurred, where the ac-
 9 tivities were or practice was undertaken within the
 10 scope of the volunteer's responsibilities in the non-
 11 profit organization or governmental entity;

12 (3) the harm was not caused by willful or crimi-
 13 nal misconduct, gross negligence, reckless mis-
 14 conduct, or a conscious, flagrant indifference to the
 15 rights or safety of the individual harmed by the vol-
 16 unteer; and

17 (4) the harm was not caused by the volunteer
 18 operating a motor vehicle, vessel, aircraft, or other
 19 vehicle for which the State requires the operator or
 20 the owner of the vehicle, craft, or vessel to—

21 (A) possess an operator's license; or

22 (B) maintain insurance.

23 (b) CONCERNING RESPONSIBILITY OF VOLUNTEERS
 24 TO ORGANIZATIONS AND ENTITIES.—Nothing in this sec-
 25 tion shall be construed to affect any civil action brought

1 by any nonprofit organization or any governmental entity
2 against any volunteer of such organization or entity.

3 (c) NO EFFECT ON LIABILITY OF ORGANIZATION OR
4 ENTITY.—Nothing in this section shall be construed to af-
5 fect the liability of any nonprofit organization or govern-
6 mental entity with respect to harm caused to any person.

7 (d) EXCEPTIONS TO VOLUNTEER LIABILITY PRO-
8 TECTION.—If the laws of a State limit volunteer liability
9 subject to one or more of the following conditions, such
10 conditions shall not be construed as inconsistent with this
11 section:

12 (1) A State law that requires a nonprofit orga-
13 nization or governmental entity to adhere to risk
14 management procedures, including mandatory train-
15 ing of volunteers.

16 (2) A State law that makes the organization or
17 entity liable for the acts or omissions of its volun-
18 teers to the same extent as an employer is liable for
19 the acts or omissions of its employees.

20 (3) A State law that makes a limitation of li-
21 ability inapplicable if the civil action was brought by
22 an officer of a State or local government pursuant
23 to State or local law.

24 (4) A State law that makes a limitation of li-
25 ability applicable only if the nonprofit organization

1 or governmental entity provides a financially secure
 2 source of recovery for individuals who suffer harm
 3 as a result of actions taken by a volunteer on behalf
 4 of the organization or entity. A financially secure
 5 source of recovery may be an insurance policy within
 6 specified limits, comparable coverage from a risk
 7 pooling mechanism, equivalent assets, or alternative
 8 arrangements that satisfy the State that the organi-
 9 zation or entity will be able to pay for losses up to
 10 a specified amount. Separate standards for different
 11 types of liability exposure may be specified.

12 (e) LIMITATION ON PUNITIVE DAMAGES BASED ON
 13 THE ACTIONS OF VOLUNTEERS.—

14 (1) GENERAL RULE.—Punitive damages may
 15 not be awarded against a volunteer in an action
 16 brought for harm based on the action of a volunteer
 17 acting within the scope of the volunteer's responsibil-
 18 ities to a nonprofit organization or governmental en-
 19 tity unless the claimant establishes by clear and con-
 20 vincing evidence that the harm was proximately
 21 caused by an action of such volunteer which con-
 22 stitutes willful or criminal misconduct, or a con-
 23 scious, flagrant indifference to the rights or safety of
 24 the individual harmed.

1 (2) CONSTRUCTION.—Paragraph (1) does not
2 create a cause of action for punitive damages and
3 does not preempt or supersede any Federal or State
4 law to the extent that such law would further limit
5 the award of punitive damages.

6 (f) EXCEPTIONS TO LIMITATIONS ON LIABILITY.—

7 (1) IN GENERAL.—The limitations on the liabil-
8 ity of a volunteer under this Act shall not apply to
9 any misconduct that—

10 (A) constitutes a crime of violence (as that
11 term is defined in section 16 of title 18, United
12 States Code) or act of international terrorism
13 (as that term is defined in section 2331 of title
14 18) for which the defendant has been convicted
15 in any court;

16 (B) constitutes a hate crime (as that term
17 is used in the Hate Crime Statistics Act (28
18 U.S.C. 534 note));

19 (C) involves a sexual offense, as defined by
20 applicable State law, for which the defendant
21 has been convicted in any court;

22 (D) involves misconduct for which the de-
23 fendant has been found to have violated a Fed-
24 eral or State civil rights law; or

1 (E) where the defendant was under the in-
2 fluence (as determined pursuant to applicable
3 State law) of intoxicating alcohol or any drug at
4 the time of the misconduct.

5 (2) RULE OF CONSTRUCTION.—Nothing in this
6 subsection shall be construed to effect subsection
7 (a)(3) or (e).

8 **SEC. 5. LIABILITY FOR NONECONOMIC LOSS.**

9 (a) GENERAL RULE.—In any civil action against a
10 volunteer, based on an action of a volunteer acting within
11 the scope of the volunteer's responsibilities to a nonprofit
12 organization or governmental entity, the liability of the
13 volunteer for noneconomic loss shall be determined in ac-
14 cordance with subsection (b).

15 (b) AMOUNT OF LIABILITY.—

16 (1) IN GENERAL.—Each defendant who is a
17 volunteer, shall be liable only for the amount of non-
18 economic loss allocated to that defendant in direct
19 proportion to the percentage of responsibility of that
20 defendant (determined in accordance with paragraph
21 (2)) for the harm to the claimant with respect to
22 which that defendant is liable. The court shall
23 render a separate judgment against each defendant
24 in an amount determined pursuant to the preceding
25 sentence.

1 (2) PERCENTAGE OF RESPONSIBILITY.—For
2 purposes of determining the amount of noneconomic
3 loss allocated to a defendant who is a volunteer
4 under this section, the trier of fact shall determine
5 the percentage of responsibility of that defendant for
6 the claimant’s harm.

7 **SEC. 6. DEFINITIONS.**

8 For purposes of this Act:

9 (1) ECONOMIC LOSS.—The term “economic
10 loss” means any pecuniary loss resulting from harm
11 (including the loss of earnings or other benefits re-
12 lated to employment, medical expense loss, replace-
13 ment services loss, loss due to death, burial costs,
14 and loss of business or employment opportunities) to
15 the extent recovery for such loss is allowed under ap-
16 plicable State law.

17 (2) HARM.—The term “harm” includes phys-
18 ical, nonphysical, economic, and noneconomic losses.

19 (3) NONECONOMIC LOSSES.—The term “non-
20 economic losses” means losses for physical and emo-
21 tional pain, suffering, inconvenience, physical im-
22 pairment, mental anguish, disfigurement, loss of en-
23 joyment of life, loss of society and companionship,
24 loss of consortium (other than loss of domestic serv-

1 ice), hedonic damages, injury to reputation and all
2 other nonpecuniary losses of any kind or nature.

3 (4) NONPROFIT ORGANIZATION.—The term
4 “nonprofit organization” means—

5 (A) any organization described in section
6 501(c)(3) of the Internal Revenue Code of 1986
7 and exempt from tax under section 501(a) of
8 such Code; or

9 (B) any not-for-profit organization orga-
10 nized and conducted for public benefit and op-
11 erated primarily for charitable, civic, edu-
12 cational, religious, welfare, or health purposes.

13 (5) STATE.—The term “State” means each of
14 the several States, the District of Columbia, the
15 Commonwealth of Puerto Rico, the Virgin Islands,
16 Guam, American Samoa, the Northern Mariana Is-
17 lands, any other territory or possession of the Unit-
18 ed States, or any political subdivision of any such
19 State, territory, or possession.

20 (6) VOLUNTEER.—The term “volunteer” means
21 an individual performing services for a nonprofit or-
22 ganization or a governmental entity who does not re-
23 ceive—

1 (A) compensation (other than reasonable
2 reimbursement or allowance for expenses actu-
3 ally incurred); or

4 (B) any other thing of value in lieu of com-
5 pensation,

6 in excess of \$500 per year, and such term includes
7 a volunteer serving as a director, officer, trustee, or
8 direct service volunteer.

9 **SEC. 7. EFFECTIVE DATE.**

10 (a) IN GENERAL.—This Act shall take effect 90 days
11 after the date of enactment of this Act.

12 (b) APPLICATION.—This Act applies to any claim for
13 harm caused by an act or omission of a volunteer where
14 that claim is filed on or after the effective date of this
15 Act, without regard to whether the harm that is the sub-
16 ject of the claim or the conduct that caused the harm oc-
17 curred before such effective date.

Passed the Senate May 1, 1997.

Attest:

Secretary.

105TH CONGRESS
1ST SESSION

S. 543

AN ACT

To provide certain protections to volunteers, non-profit organizations, and governmental entities in lawsuits based on the activities of volunteers.